

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DEAN DENNIS, et al.,
Plaintiffs,

vs.

OHIO STATE TEACHERS
RETIREMENT BOARD, et al.,
Defendants.

Case No. 1:19-cv-386
McFarland, J.
Litkovitz, M.J.

**REPORT AND
RECOMMENDATION**

Plaintiffs initiated this class action in May 2019 against the Ohio State Teachers Retirement Board (“the Board”) to challenge defendant’s alleged unlawful elimination of vested retirement benefits, namely the annual allowance increases or annual cost of living adjustments beginning on July 1, 2017. (Doc. 1). Plaintiffs bring claims under the United States Constitution, the Ohio Constitution, and Ohio state law. (*Id.*). In July 2019, the Board filed a motion to dismiss for lack of jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). (Doc. 10). The Board sought dismissal of plaintiff’s claims based on its Eleventh Amendment sovereign immunity. (Docs. 10, 11). Thereafter, plaintiffs filed an unopposed amended class action complaint on August 26, 2019. (Doc. 14). In the amended class action complaint, in addition to the Board, plaintiffs name several Board members as defendants in their individual capacity. On October 23, 2019, defendants filed renewed motions to dismiss plaintiffs’ first amended class action complaint. (Docs. 21, 23, 24). Plaintiff’s amended class action complaint “supersedes the original complaint and is the ‘legally operative complaint’ in this matter.” *Scuba v. Wilkinson*, No. 1:06-cv-160, 2006 WL 2794939, at *2 (S.D. Ohio Sept. 27, 2006) (citing *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000)).

Accordingly, it is **RECOMMENDED** that the Board's first motion to dismiss (Doc. 10) be **DENIED** as **MOOT**.

Date: 1/23/20

Karen L. Litkovitz
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United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).